

## **WHAT IS CONSIDERED TO BE INVOLUNTARY TERMINATION? (excerpt from IRS Notice 2009-27 and edited for EUTF applicability)**

The following extract is provided to assist you in determining whether or not an employee is eligible to be considered “involuntarily terminated” from his/her job. Only the employer can make this determination. The EUTF will process a termination based upon the input from the employer and will not make any determination nor interpretation whether a voluntary or involuntary termination is involved.

The Q&A’s apply solely for purposes of determining whether there is an involuntary termination under section 3001 of ARRA (including new Code sections added by section 3001 of ARRA), but not for any other purposes under the Code or any other law.

**Question.** What circumstances constitute an involuntary termination for purposes of the definition of an assistance eligible individual?

**Answer.** An involuntary termination means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services. An involuntary termination may include the employer’s failure to renew a contract at the time the contract expires, if the employee was willing and able to execute a new contract providing terms and conditions similar to those in the expiring contract and to continue providing the services. In addition, an employee-initiated termination from employment constitutes an involuntary termination from employment for purposes of the premium reduction if the termination from employment constitutes a termination for good reason due to employer action that causes a material negative change in the employment relationship for the employee.

Involuntary termination is the involuntary termination of employment, not the involuntary termination of health coverage. Thus, qualifying events other than an involuntary termination, such as divorce or a dependent child ceasing to be a dependent child under the generally applicable requirements of the plan (such as loss of dependent status due to aging out of eligibility), are not involuntary terminations qualifying an individual for the premium reduction.

In addition, involuntary termination does not include the death of an employee or absence from work due to illness or disability. The determination of whether a termination is involuntary is based on all the facts and circumstances. For example, if a termination is designated as voluntary or as a resignation, but the facts and circumstances indicate that, absent such voluntary termination, the employer would have terminated the employee’s services, and that the employee had knowledge that the employee would be terminated, the termination is involuntary.

**Question.** Does an involuntary termination include a lay-off period with a right of recall or a temporary furlough period?

**Answer.** Yes. An involuntary reduction to zero hours, such as a lay-off, furlough, or other suspension of employment, resulting in a loss of health coverage is an involuntary termination for purposes of the premium reduction.

**Question.** Does an involuntary termination include a reduction in hours?

**Answer.** Generally no. If the reduction in hours is not a reduction to zero, the mere reduction in hours is not an involuntary termination. However, an employee's voluntary termination in response to an employer-imposed reduction in hours may be an involuntary termination if the reduction in hours is a material negative change in the employment relationship for the employee.

**Question.** Does involuntary termination include an employer's action to end an individual's employment while the individual is absent from work due to illness or disability?

**Answer.** Yes. Involuntary termination occurs when the employer takes action to end the individual's employment status (but mere absence from work due to illness or disability before the employer has taken action to end the individual's employment status is not an involuntary termination).

**Question.** Does an involuntary termination include retirement?

**Answer.** If the facts and circumstances indicate that, absent retirement, the employer would have terminated the employee's services, and the employee had knowledge that the employee would be terminated; the retirement is an involuntary termination.

**Question.** Does involuntary termination include involuntary termination for cause?

**Answer.** Yes. However, for purposes of COBRA, if the termination of employment is due to gross misconduct of the employee, the termination is not a qualifying event and the employee and other family members losing health coverage by reason of the employee's termination of employment are not eligible for COBRA continuation coverage.

**Question.** Does an involuntary termination include a resignation as the result of a material change in the geographic location of employment for the employee?

**Answer.** Yes.

**Question.** Does an involuntary termination include a work stoppage as the result of a strike initiated by employees or their representatives?

**Answer.** No. However, a lockout initiated by the employer is an involuntary termination.

**Question.** Does an involuntary termination include a termination elected by the employee in return for a severance package (a "buy-out") where the employer indicates that after the offer period for the severance package, a certain number of remaining employees in the employee's group will be terminated?

**Answer.** Yes.